

VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI

MEETING: **BOARD OF ZONING APPEALS**

DATE AND TIME: **WEDNESDAY, November 11, 2020 5:30 p.m.**

LOCATION: **Germantown Village Hall Board Room
N112 W17001 Mequon Road**

NOTICE: Pursuant to the current recommendation of the Centers for Disease Control and Prevention limiting the size of public gatherings, capacity within the Board Room will be limited. Members of the body and citizens may also attend the meeting virtually through the WebEx platform, Meeting #: 126 165 4222 Password: fJCeJKa5m23 which can be accessed by phone at 408-418-9388 or by logging on at <https://villageofgermantown.my.webex.com/villageofgermantown.my/j.php?MTID=mf74be94c4cfb8ebb41796d30cd44d213> Citizens wishing to view the meeting are encouraged to watch the live broadcast of the meeting through Channel 25 on Spectrum cable, or the livestream on the Village's website. Citizens not wishing to attend the meeting personally or virtually may submit any public comments by sending an email to comments@village.germantown.wi.us by 4 p.m. on the day of the meeting so that it can be provided to the members of the body for their consideration.

- I. **CALL TO ORDER:** This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.
- II. **ROLL CALL:**
- III. **APPROVAL OF MINUTES:** July 8, 2020.
- IV. **PUBLIC HEARING:**
 - A. THE PURPOSE of said hearing will be to hear any and all parties, their attorneys or agents, for or against a **VARIANCE APPEAL** filed by **Josh Wirth, Agent for Robert Bennett**, property owner, who is requesting a variance from Section 17.41(6)(a) of the Village's Zoning Code in order to construct a retaining wall with a maximum height of 9 feet approximately 4 feet away from the side yard property line vs. the minimum requirement of 9 feet.

W130N11617 Harvest Ridge Road Germantown

- V. **DELIBERATION AND ACTION BY THE BOARD on Item IV:**
- VI. **NEXT MEETING DATE AND TIME IF NEEDED:**
Second Wednesday's of the month at 5:30 p.m.
- VII. **ADJOURNMENT**

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service please contact the Village Clerk at (262)250-4740 at least 2 days prior to the meeting.

Notice is given that a majority of the Village Board may attend this meeting to gather information about an agenda item over which they have decision making responsibility. This may constitute a meeting of the Village Board per State ex rel. Badke v. Greendale Village Board, even though the Village Board will not take formal action at this meeting.

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
July 8, 2020**

CALL TO ORDER: The meeting was called to order at 5:34 p.m by Chairman White.

ROLL CALL: Chairman White, Hansen, Schodron, Edwards, Huber, Assistant Planner Zandt, and Clerk Braunschweig. Knop and Yao absent excused. Knop will listen to the tape.

APPROVAL OF MINUTES: June 10, 2020.

Motion (Hansen/Edwards) to approve minutes as presented for June 10, 2020.

Motion Carried unanimously.

Review of Training Materials.

Chairman White commented that due to the new members we are going to go over training materials.

Attorney Sajdak referenced the training materials book for Zoning Board of Appeals.

Prior to the meeting normally a permit has been applied for and denied due to code requirements. The aggrieved completes an application and pays a fee. There is a notice in the published in the paper, on the website and mailed to neighbors.

The zoning board of appeals come from State Statutes 61.35 and 62.23 sub 7.

This identifies the make up of the board as five members appointed by the Village Board for a three-year term. The alternate members are identified by the Village President annually. The members can only be removed for cause. Alternates act when a member is not able too.

The attorney reviewed quorum. At least three members are needed to take action. Walking quorum was also discussed and cited. The attorney gave advice on viewing property prior to the meeting. He suggested to do so separately; otherwise, a notice will be required.

The Zoning Board of Appeals should be done in public open session.

A police officer came to the meeting as the security alarm for the Village Hall was going off. The Clerk and deputies then turned the alarm off.

Ethics and due process were discussed. He commented on an impartial decision. When in doubt recuse yourself from the item.

It is ok to drop by the property and use google maps to view the land. Use caution if you receive information that the other members do not have. Do not discuss with property owner on your own.

This is a quasi-judicial body. Everything needs to be in the open.

Time limits rules are acceptable as long as they are applied on an equal basis to everyone.

Base decisions on factual evidence that is before you.

Conflicts of interest or financial gain and misconduct in office was discussed. Discussion ensued of overturning decisions based on applying correct processes.

Discussion ensued of the different types of requests. The Community Development Department presents staff comments and Village information.

Public Interest, following the findings of fact, and hardship was discussed.

Chairman White stated next hearing will be as needed.

MOTION The meeting adjourned at 6:38 p.m. Motion by Hansen/Knop to adjourn at 6:38 p.m.

Respectfully Submitted,

Deanna B. Braunschweig, WCMC/CMC

VILLAGE OF GERMANTOWN
OFFICE OF THE VILLAGE CLERK
N112 W17001 MEQUON ROAD/P. O. BOX 337
GERMANTOWN WI 53022-0337

BOARD OF ZONING APPEALS
NOTICE OF APPEAL OR APPLICATION

Case No. 2-2020
Filing Date 9-23-2020
Fee Paid \$ 570.⁰⁰
Hearing Date: 11/11/2020
Notice Mailed: 10/16/2020
Notices Published: 10/21, 10/28

To: Board of Zoning Appeals
Village of Germantown, Wisconsin

NOTICE IS HEREBY GIVEN that the undersigned hereby (appeals for relief from a decision of an administrative official) (applies for the following described right or privilege) :

1. Appellant's or Applicant's Name: Josh Wirth - Wirth Services Inc
Address: 1116 W12535 Elm Lane Germantown WI 53022
Phone No.: 414-651-9723
2. Appellant's or applicants' interest in property:
() Owner; () Tenant; () Mortgagee; () Agent.
3. Property Owner's Name: Robert Bennett
Address: 1716 W116224 Sherwood Drive Menomonee Falls 53051
Phone No.: 262-271-6628
4. Address of property: W130 N11017 Harvest Ridge Rd Germantown
Lot 35, Block , Tax Parcel No. GTNV , Zoning District:
5. Present use of the property: Under construction residence
6. Proposed use of the property: home residence
7. Previous Appeal or Application (if any)? Yes () No ()

If YES, list date of hearing: _____ and Decision of previous hearing: _____

BENNETTS 21 @ HOTMAIL.COM

BE

8. Identify the **PURPOSE** for this appeal or application. Please circle appropriate item below and provide the requested information. Attach a separate sheet, if necessary.

(a) Appeal of decision or order of Administrative Official and Request for Interpretation of Zoning/Building Code.

1. Date of decision or order: _____
2. Description of decision or order: _____
3. Decision or order is erroneous because: _____

(b) Request for Variance of Zoning/Building Code.

1. Describe the requested variance and dimension of variance:
looking to construct retaining wall along driveway approx 4' off lot line. Retaining wall max height will be 9' high in height.
2. Explain how the Variance, IF granted, is consistent with the spirit, purpose and intent of the Code:

3. Describe the exceptional, extraordinary or unusual conditions or circumstances that apply specifically to this lot/parcel, use, structure, or intended use that **DO NOT** apply generally to other properties or uses in the SAME district:
The retaining wall placement is set for access with a vehicle into the 3rd bay of the garage
4. Describe what special conditions exist which cause practical difficulty or unnecessary hardship, IF variance is NOT granted:
Homeowner will not be able to pull into 3rd bay of garage safely
5. Explain why the variance **IS NECESSARY** for the preservation and enjoyment of substantial property rights possessed by other properties in the SAME district:

allowing a variance will give this home
a usable driveway like the rest of the
homes in the development.

6. Explain how this variance, IF granted, **WILL NOT** create substantial detriment to adjacent property, **WILL NOT** be contrary to the public interest and **WILL NOT** endanger public safety and interest:

The retaining wall is adjacent to common
grasses/walking path which will not
endanger public safety + interest

(c) Request for interpretation of regulations of the Zoning Code or the District boundaries of the Zoning Map.

1. List applicable section(s) of the Zoning Code: _____
2. Describe proposed use/activity/construction: _____

3. Explain reasons supporting requested action: _____

4. Has request been referred to Plan Commission? Yes () No ()
If YES, give recommendation of Plan Commission: _____

(d) Permission for Temporary Use Permit.

1. Describe use requested: _____
2. Proposed commencement date: _____
3. Proposed termination date: _____

(e) A determination that an unspecified or unclassified use is permitted in a Zoning District.

1. Describe use requested:

2. Attach copy of recommendation of Village Plan Commission.

(f) Permission to substitute a MORE restrictive non-conforming use for an existing non-conforming use.

1. Attach copy of recommendation of Village Plan Commission.
2. Attach copy of certification of Zoning Administrator to legality of present non-conforming use.

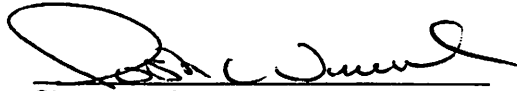
3. Date of commencement of present use: _____
4. Value of improvement on date use became non-conforming (attach documentation supporting value): \$ _____
5. Present value of all existing improvements, additions and alterations since date use became non-conforming (attach documentation): \$ _____

REQUIRED DOCUMENTATION

Each appeal or application must be accompanied by:

- A. Current plat or survey of the lot/parcel, with complete details of the site, dimensioned, elevation data, easements, existing and proposed physical features, yards and setbacks, etc.
- B. Attachments as outlined above.
- C. Filing fee(s)
- D. Copy of decision or order which is the basis of this appeal/application.
- E. Name and Address of counsel IF appellant/applicant elects to be represented by counsel.
- F. Any additional fee of \$ _____ to cover the administrative costs if a contested case is requested.

I hereby certify that the above application and/or appeal and all attachments hereto are true, correct and complete to the best of my knowledge and belief.

Dated: Sept 21, 2020 
Signature of applicant or appellant

17.52 - BOARD OF ZONING APPEALS.

- (1) **MEMBERSHIP.** See section 1.30(1) of this Code.
- (2) **ORGANIZATION.** The Board of Zoning Appeals shall organize and adopt rules and procedure for its own government in accordance with the provisions of this chapter.
 - (a) *Meetings.* Meetings shall be held at the call of the chairman and shall be open, to the public.
 - (b) *Minutes.* Minutes of the proceedings and a record of all actions shall be kept by the secretary showing the vote of each member upon each question, the reasons for the Board's determination and its findings of fact. These records shall be immediately filed in the office of the Board and shall be a public record.
 - (c) *Concurring Vote.* (Am. Ord. #12-09) The concurring vote of a majority of the quorum of the Board shall be necessary to correct an error; grant a variance; make an interpretation; and permit a utility, temporary, unclassified or substituted use.
- (3) **POWERS.** The Board of Zoning Appeals shall have the following powers:
 - (a) *Errors.* To hear and decide appeals when it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator.
 - (b) *Variances.* To hear and grant appeals for variances as will not be contrary to the public interest when, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship so that the spirit and purpose of this chapter shall be observed and the public safety, welfare and justice secured. Use variances shall not be granted.
 - (c) *Interpretations.* To hear and decide applications for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
 - (d) *Substitutions.* To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (e) *Permits.* The Board may reverse, affirm wholly or partly modify the requirements appealed from, and may issue or direct the issuance of a permit.
 - (f) *Assistance.* The Board may request assistance from other Village officers, departments, commissions and boards.
 - (g) *Oaths.* The Chairman may administer oaths and compel the attendance of witnesses.
- (4) **APPEALS.** (Rep. & Recr. Ord. #2-94; Am. Ord. #19-96) Appeals of any administrative determination of the Zoning Administrator, the Building Inspector or the Plan Commission concerning the literal enforcement of this chapter and chapters 14 and 18 of this Code may be made by any person aggrieved or by any officer, department or board of the Village. Such appeals shall be filed with the Secretary within 30 days after receiving actual or constructive notice of the administrative decision or order or the granting of a permit by the Zoning Administrator, Building Inspector or Plan Commission. Such appeals and applications shall include the following:
 - (a) Name and address of the applicant.
 - (b) What administrative determination is being appealed and the basis for the appeal.
- (5) **HEARINGS.** The Board shall fix a reasonable time and place for the required public hearing and shall give notice as specified in section 17.53 of this chapter. At the hearing, the appellant or applicant may appear in person or be represented by an agent or attorney.
- (6) **FINDINGS.** No variance to the provisions of this chapter shall be granted by the Board unless it finds, beyond a reasonable doubt, that all the following facts and conditions exist and so indicates such in the minutes of its proceedings.

- (a) *Preservation of Intent.* No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use or conditional use in that particular district.
 - (b) *Exceptional Circumstances.* There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district, and the granting of the variance should not be of so general or recurrent nature as to suggest that this chapter should be changed.
 - (c) *Hardships Not Grounds for Variance.* No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
 - (d) *Preservation of Property Rights.* The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (e) *Absence of Detriment.* No variance shall be granted that will create substantial detriment to adjacent property or that will materially impair or be contrary to the purpose and spirit of this chapter or the public interest.
- (7) **DECISION.** The Board shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, the Zoning Administrator and the Plan Commission.
- (a) *Conditions.* Conditions may be placed upon any zoning permit ordered or authorized by the Board.
 - (b) *Variances, Substitutions or Use Permits.* Variances, substitutions or use permits granted by the Board shall expire within 6 months unless substantial work has commenced pursuant to such grant.
- (8) **REVIEW BY COURT OF RECORD.** Any person aggrieved by any decision of the Board may present to a court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board.

State law references—Zoning board of appeals, Wis. Stats. §§ 61.35, 62.23(7)(e).